

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TiVo Inc.)	
Petition for Clarification or Waiver)	
of 47 C.F.R. § 76.640(b)(4))	MB Docket No. 12-230
)	CS Docket No. 97-80
Implementation of Section 304 of the)	PP Docket No. 00-67
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	

**COMMENTS OF
THE ALLVID TECH COMPANY ALLIANCE**

The Alliance supports the objectives and outcome pursued by its member TiVo in its petition for clarification or waiver. Piecemeal approaches to interoperability and regulation by waiver are inadequate to fulfill all of the Commission’s responsibilities under Section 629. With the imminent approach of the December 1, 2012 compliance date for Section 76.640(b)(4)(iii) of the Commission’s rules, however, the Alliance urges the Commission to grant TiVo’s petition, *and* to follow with a more comprehensive rulemaking.

I. The Commission Should Immediately Proceed To Clarify Section 76.640(b)(4)(iii).

The Alliance consistently has emphasized that the “transition to IP-based digital techniques is an opportunity that if not grasped now will become an obstacle.”¹ The Commission should immediately address the continuing and unresolved barriers to competition and to MSO system interoperability with home network devices. The essential tools for a fully interactive and

¹ *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Reply Comments of the AllVid Tech Company Alliance, at 2 (Dec. 12, 2011).

functional interface already exist, and as TiVo now requests, should be applied initially in a timely clarification of Section 76.640(b)(4)(iii). The Alliance, in commenting on the Commission's proposal to change its rules so as to allow the encryption of the basic tier of cable services, stressed the importance of a single standard for IP home network connection that is available on a non-discriminatory basis:²

The Commission, reacting to a number of waiver requests, did require that by December 1, 2012, cable MSOs must support "a" standard for IP-based, interoperable home networking from interactive MVPD-provided devices.³ With no such standard then available for reference, and clearly anticipating an AllVid rulemaking, the Commission did not also require MSOs all to use *the same standard or interoperable standards*, so as to make this interface of tangible value to consumers. ... The Commission is now in a much stronger position to proceed and – a year closer to the deadline, with no progress of record – the urgency is much greater. The suite of IP-based interface standards that the Alliance proposed to the Commission on September 20, 2011, provides the necessary tools and references for a national standard and interoperable interface, based entirely on existing private sector standards.

In the October 2010 CableCARD Order, the Commission concluded that it was "important to identify a baseline of functionality ... that consumers who network their devices and device manufacturers can rely on."⁴ The Commission also described a set of features that are necessary to "provide a foundation for a retail market," including delivery of compressed, recordable content, standardized closed caption delivery, and service discovery.⁵

At the time, the Commission noted that "considerable work [is] ongoing in industry standard bodies to provide these functionalities," and said it would allow time for this technical work to proceed. Thus it declined to identify specific means by which the functionality must be provided.⁶ Since then, the technical work has progressed in documents developed by the Digital Living Network Alliance ("DLNA") and others. It is now the optimal and essential time for the Commission to recognize the opportunity presented by this progress.

² *Id.* at 5-6 (footnotes 3 – 6 below are as in original).

³ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Third Report and Order and Order on Reconsideration ("CableCARD Order"), Appendix (Oct. 14, 2010).

⁴ *Id.* at 44.

⁵ *Id.*

⁶ *Id.*

The baseline functionality requirements identified by the Commission in the CableCARD Order are identical to the home networking requirements contemplated in the AllVid NOI – the delivery of recordable compressed programming, together with associated data (*e.g.*, closed captions) and the protocols for discovery of services or programming and the navigation thereto via IP networking technologies. In the AllVid context, the Alliance described specific technology, suitable for adoption in the rules, in its September 20, 2011, filing⁷ ***

Each delay in the clarification of Section 76.640(b)(4)(iii) delays the availability of a nationally standard, two-way interface from cable networks to home networks. Delay is unnecessary because the necessary tools for such a standard have already been identified, along with a proposed regulatory context for implementation by MVPDs.

II. Attributes Of And Tools For An “Open Standard” That Would Fully Support Consumers’ Devices In Interactive Network Operation Are Well Known And Fully Available.

The Alliance has detailed to the Commission the essential attributes of “an open standard” interface that would satisfy the new Section 76.640(b)(4)(iii):

Advances in home networking make it possible to achieve the goals of Section 629 using industry-developed and widely deployed standards and technologies. ... These are now consensus goals. As set forth in the National Broadband Plan and supported by the “seven principle” pledge of the National Cable and Telecommunications Association, a regulation that references IP-based private sector home networking is the best way to achieve a robust marketplace in which consumers can purchase at retail, or lease from MVPDs, devices that can: (1,2) Access all of the video services they subscribe to from MVPDs without a set-top box; (3) access internet-delivered content through both leased MVPD devices and purchased retail devices; (4) navigate easily the huge library of content available from various sources; (5) move and stream content securely between devices; and (6, 7) benefit from innovation and universality. ***

⁷ *In the Matter of Video Device Competition, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, letter from Robert S. Schwartz, Counsel, AllVid Tech Company Alliance to Marlene H. Dortch, Sec., FCC (Sept. 20, 2012), with attached regulation including draft specifications (“Alliance Specification”), and Discussion Document (“AllVid Tech Company Alliance, *Home Gateway Navigation Interface Referenced Standards and Draft Regulation*”). (“Discussion Document”) The Alliance Specification and the Discussion Document, both as filed on Sept. 20, 2011, are attached herein for reference.

Using a single standards-based IP interface to connect MVPD services to consumers' devices (such as internet-enabled televisions) would provide:

- A clear, well-defined mechanism for MVPD services to be described to and rendered by a consumer's devices, by specifying how services are identified and accessed;
- A ubiquitous single IP-based interface to access MVPD content, internet-delivered (MVPD and over-the-top) content, and home-network content; and
- A market for developing innovative products which access MVPD and other content over a widely-used and widely-deployed network infrastructure, by using IP technology and requiring MVPDs to enable access to content via the IP interface ...⁸

In describing the suite of technologies for potential reference by the Commission in its regulations, the Alliance noted in the attached Discussion Document that these are widely accepted and technologically uncontroversial:

Many of these references draw upon the Digital Living Network Alliance (DLNA) standards which were collaboratively developed, and are already widely supported, by MVPDs, consumer electronics and information technology companies, and media companies. The DLNA-referenced standards and specifications include signal security and content protection requirements and technologies that are already referred to in FCC regulations, approved by CableLabs and by MVPDs, and widely licensed for the retransmission of content within the home. FCC reference to these and other private sector standards is precisely the process intended by Congress in Section 629, which instructs the Commission, in its regulations, to assure the commercial availability of independently sourced navigation devices through consultations with private-sector standard-setting organizations.

To the extent the Commission would refer to these standards in its regulations governing all MVPDs, public notice and comment is necessary through a notice of proposed rulemaking. In the context of Section 76.640, however, the Commission has already indicated that it expects compliance with *an* open standard that supports two-way communication and interaction.

⁸ *Id.*, Discussion Document.

III. An Open Standard Is One That Supports Full MVPD Network Interaction By Home Network Devices And Is Not Limited By MVPD License Or Technical Constraints.

An “open” standard is one that is licensed, on a fully nondiscriminatory basis, by the contributor of the intellectual property rights to the standard – *not* by whichever MVPD is deploying the standard in its system.⁹ Similarly and of equal importance, the MVPD must not layer qualifications or limitations on devices supported by the interface so as to limit their lawful operation in affording consumers full access to the network. As TiVo said in its petition, “If each cable operator deploys set-top devices based on its *own* understanding of ‘an’ open industry standard, the result may be an outcome that, in terms of home network interoperability, is neither standard nor open.”

IV. Full Interactive Communication Through A Device-Generated Guide Is Essential.

There is little point to identifying an IP interface from an IP home network to an IP operator network if upstream communications, through an interactive program guide, generated in the device to allow the integration of MVPD and other content in a single menu, are to be compromised. Cable operators have publicized their intentions to integrate offers of non-MVPD, third-party programs and services “in the cloud,” so as to present a unified menu and offer to subscribers.¹⁰ If device guides cannot offer independent choices of third party programming *alongside* offers of MVPD programming, both consumers and competition will suffer. Operators will be able to use the

⁹ *Id.* See also *In the Matter of Video Device Competition, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of CEA and CERC on Notice of Inquiry, at 15-16 (July 13, 2010).

¹⁰ See, e.g., Steve Donohue, *The Cable Show scorecard: Who were the winners and losers in Boston?*, http://www.fiercecable.com/story/cable-show-scorecard-who-were-winners-and-losers-boston/2012-06-01?utm_medium=nl&utm_source=internal (June 1, 2012).

leverage of menu integration – earned strictly by restricting the access of third-party devices to system protocols and metadata – to foreclose options to consumers, and to lessen competition in entrants’ dealings with third party programmers. The exercise of such power at the device interface level would contravene the assurances conveyed in the core regulations that implement Section 629:

§ 76.1201

Rights of subscribers to use or attach navigation devices.

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

§ 76.1203

Incidence of harm.

A multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

The rights of cable subscribers in attaching devices to systems, directly or through referenced interfaces, must not be restricted in the absence of a threat of theft of service or harm to the network. There is no question about the security of the interfaces available for standard reference in requesting and receiving content on an interactive basis. Hence, there is no reason for the Commission to permit, in its regulations or otherwise, an operator to *reserve to itself* the right to integrate MVPD and OTT choices in a single menu but to deny that right to makers of competitive navigation devices that connect via Section 76.640(b)(4)(iii).

V. The Commission Should Also Proceed Via Regulation To Address Support For All Navigation Devices By All MVPDs.

The Alliance's attached Discussion Document describes how the Commission can refer to private sector standards to establish an open interface for all MVPD programming and services:

A single standards-based interface will enable competition and catalyze innovation. Such a universal interface does not require specific instructions for MVPD support, and does not prescribe how device manufacturers must build consumer navigation devices. An MVPD can use direct IP transmission to support consumer devices or can furnish a proprietary "gateway" device to translate linear programming into the single standard IP-based interface that supports consumer devices. Thus, the regulation provides that an MVPD can choose to support "consumer navigation devices" (*see new*¹¹ 76.1200(e)) directly through a "navigation interface" (new 76.1200(d)) or by furnishing a proprietary "gateway navigation device" (76.1200(f)).

The Alliance urges that, in addition to taking prompt action as requested by TiVo in light of the looming December 1 deadline for compliance with Section 76.640(b)(4)(iii), the Commission should publish the Alliance specification and draft regulation proposal as a Notice of Proposed Rulemaking.

Respectfully submitted,

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¹¹ These three terms are defined in the Alliance's draft amendments to Section 76.1200 *et seq.*, in Section 76.1200.